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July 3, 2012

Mr. Phil Isenberg, Chairman, and Council Members
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

**Subject: Support for the Delta Stewardship Council's Decision Not to
Include a Water Quality Policy in the Delta Plan**

Dear Chairman Isenberg and Council Members:

The Sacramento Regional County Sanitation District (SRCS D) submits these comments in support of the Delta Stewardship Council's (Council) decision not to include a water quality policy in the Delta Plan. It is our understanding that the Council reaffirmed its decision not to include such a policy at the Council's June 28, 2012 meeting. However, during that meeting, the Council invited SRCS D to submit written comments responding to the Contra Costa Water District's (CCWD) June 27, 2012, letter requesting that a water quality policy be included in the Delta Plan. This letter provides SRCS D's response.

As an initial matter, SRCS D fully supports protection of Delta water quality consistent with all applicable state and federal laws. SRCS D also respects CCWD's important interest in, and its advocacy for, protection of Delta water quality. But as explained in our letter to the Council dated April 6, 2012 (attached), there is considerable doubt as to the need for a water quality policy, whether such a policy will address that need, and whether the policy would be functional and effective. Here, of course, we are mindful of the special significance of the term "policy" as it relates to the Delta Plan.

With more specific regard to CCWD's letter, the Porter-Cologne Water Quality Control Act (Porter-Cologne) clearly establishes the State Water Resources Control Board (State Water Board) and regional water quality control boards (Regional Water Boards) as "the principal state agencies with primary responsibility for the coordination and control of water quality."¹ Porter-Cologne further provides that the State Water Board and Regional Water Boards "shall, at all times, coordinate their respective activities so as to achieve a *unified and effective water quality control program in this state*."² Including a water quality policy in the Delta Plan would undermine Porter-

¹ Wat. Code, § 13001.

² Wat. Code, § 13001, emphasis added.

Cologne's directive for a unified statewide water quality control program administered by the State Water Board and the nine Regional Water Boards under its jurisdiction.

Moreover, the Council's enabling legislation states that it "does not affect ... [t]he Porter-Cologne Water Quality Control Act[.]"³ Thus, there is no clear intent of the Legislature to provide overlapping and duplicative regulatory authority to the Council on water quality matters. Rather, the Legislature clearly intended that the State Water Board and Regional Water Boards retain primacy in this area.

In addition, a water quality policy in the Delta Plan would not add value to the existing regulatory framework. For example, CCWD's proposed policies would provide that covered actions must avoid degradation to the extent feasible consistent with existing federal regulations and antidegradation policies. Such a policy would do no more than restate what the law already is, and further it would not provide a meaningful basis for state or local agencies to make Delta Plan consistency determinations. Federal law and state law require the State Water Board and Regional Water Boards to implement antidegradation policies with regard to activities that may adversely affect water quality.⁴ In accordance with antidegradation policies, the water boards require proposed discharges with the potential to lower water quality to conduct rigorous analyses quantifying the potential water quality impacts.⁵ These detailed analyses provide the basis for regulatory and permitting decisions.⁶ The water boards' determinations regarding antidegradation are subject to public review and comment. A party who believes the water boards' determinations are improper has a right to challenge those determinations.

In the meantime, it is unclear how a local agency or state agency even could make a determination of consistency with a policy that said that covered actions will be consistent with antidegradation policies. Under the antidegradation policy itself, the state and regional boards must determine whether a discharge will be allowed. CCWD's proposal would superimpose a new conflicting standard as an overlay on these existing policies. Rather than add value, this would create confusion, uncertainty, and controversy regarding how the water boards are to implement the federal and state antidegradation policies and regarding what local agencies are expected to do with respect to applying antidegradation policies which, by their own terms, are not applied by local agencies.

Finally, we note that antidegradation policies, and all state and federal water quality laws, apply to activities that may occur throughout the entire land area that is tributary to the Delta. In fact, these laws may apply also to various actions occurring within the Delta that are not "covered actions" (such as activities by private parties).

³ Wat. Code, § 85032(d).

⁴ 40 C.F.R. § 131.12; Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California* (Oct. 28, 1968) (Resolution No. 68-16).

⁵ 40 C.F.R. § 131.12; Resolution No. 68-16; see Administrative Procedures Update No. 90-004, State Water Board (July 2, 1990, available at: http://www.swrcb.ca.gov/water_issues/programs/npdes/docs/apu_90_004.pdf (last visited, June 30, 2012)).

⁶ 40 C.F.R. § 131.12; Resolution No. 68-16, p. 1; APU 90-004, pp. 1, 3, 7.

Delta Stewardship Council

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For these reasons, substituting the Council's judgment regarding water quality for that of the State Water Board and Regional Water Boards by including a water quality policy in the Delta Plan would be unnecessary, duplicative and counterproductive. SRCSD concurs that the Council has adequately considered these issues and should not pursue them further.

We appreciate your consideration of these comments in support of the Council's decision not to include a water quality policy in the Delta Plan. Please contact me at (916) 876-6030 or dornl@sacsewer.com if you have any questions or would like additional information.

Sincerely,



Linda Dorn

Environmental Program Manager

cc: Cindy Messner, Delta Plan Program Manager, Delta Stewardship Council
Joe Grindstaff, Executive Officer, Delta Stewardship Council
Terrie Mitchell, Legislative and Regulatory Affairs Manager
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